Petition not printed

No 659

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IN THE

Supreme Court of the United States

October Term, 1944.

BEATRICE MILLER MONTANYE,
Claimant-Appellant,

against

THE STATE OF NEW YORK,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND PERMISSION TO PROCEED IN FORMA PAUPERIS.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND PERMISSION TO PROCEED IN FORMA PAUPERIS.

Statement.

The petitioner prays for a writ of certiorari to review an order of the Court of Claims of the State of New York entered on October 9, 1944, and asks permission to proceed *in forma pauperis.*

The order of the Court of Claims of the State of New York dismissed upon the merits a claim for damages due to an alleged appropriation of portions of claimant's land by the State in constructing a state highway in Herkimer County, New York.

The claimant appealed from the order of the Court of Claims of the State of New York to the Supreme Court

of the State of New York, Appellate Division Fourth Judicial Department, which appeal is now pending. Claimant is now seeking to appeal the same order to this Court.

The claimant made a motion in the Appellate Division of the Supreme Court for permission to proceed as a poor person, which motion the Court denied.

ARGUMENT.

POINT I.

The claimant is not entitled to a writ of certiorari as a matter of law.

This action was brought against the State of New York by a private individual to recover the sum of Seventy-seven Hundred Six Dollars ($7,706.) for an alleged appropriation of portions of her land in August, 1923 and September, 1924 by the State of New York in the construction of a state highway in the Town of Webb, Herkimer County, New York.

The Supreme Court of the United States may review upon a writ of certiorari a final judgment or decree in any suit "in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, * * * " (28 U.S.C.A. § 344).

Claimant prays for a writ of certiorari to review an order of the Court of Claims of the State of New York, which Court is not the highest court of the State of New York.

Furthermore, there does not appear to be any Federal question involved over which this Court can take jurisdiction.

The claimant, as a matter of right, may appeal the order of the Court of Claims of the State of New York to the Appellate Division of the Supreme Court of the State of New York (N. Y. Court of Claims Act § 29). Such appeal has been taken to the Appellate Division of the Supreme Court and the action is now pending.

POINT II.

Claimant should not be allowed to proceed in forma pauperis.

Claimant's motion to proceed *in forma pauperis* is wholly without merit, as the Supreme Court of the United States has no jurisdiction in this action.

Moreover, the claimant is a property owner in Herkimer County, New York. She made a motion for leave to appeal as a poor person in the Appellate Division of the Supreme Court of the State of New York, which motion was denied.

CONCLUSION.

We respectfully submit that this cause cannot be reviewed by this Court as a matter of law and urge that the petition be dismissed.

Dated: November 10, 1944.

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